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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee/Respondent, v. EDUARDO MARTINEZ, Appellant/Petitioner.	)	2 CA-CR 2009-0209 2 CA-CR 2009-0321 (Consolidated) DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20070764

Honorable Jane L. Eikleberry, Judge

AFFIRMED IN PART
VACATED AND REMANDED IN PART

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra
Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Scott A. Martin
Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Appellant Eduardo Martinez appeals from his convictions for fraudulent scheme and artifice and theft by misrepresentation. He maintains there was insufficient evidence to support the fraudulent scheme and artifice conviction and the trial court erred in admitting evidence of two prior misdemeanor convictions, refusing to grant his motion to substitute counsel and ordering him to pay restitution to Compass Bank. Because we agree the restitution order was improper but otherwise find no error, we vacate the restitution order as to Compass Bank and affirm in all other respects.[1]

Background

¶2 "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against [Martinez]." *State v. Proctor*, 196 Ariz. 557, ¶ 3, 2 P.3d 647, 649 (App. 1998). Martinez was indicted in 2007 after checks he issued for cash and services at several local businesses were returned for insufficient funds. Originally, Tatiana Struthers of the Pima County Public Defender's office represented Martinez. In July 2008, Struthers filed a notice with the trial court advising it that Martinez had requested another attorney be appointed to represent him because he "believe[d] that another attorney will be successful in securing a better plea offer." The court found there was no conflict of interest, and Struthers continued to represent

[1]On appeal, Martinez also challenges the trial court's failure to issue a judgment on his pro se motion to vacate, which he filed after trial counsel's filing the notice of appeal. In the notice of appeal, Martinez's trial counsel requested and we granted leave to withdraw for purposes of the appeal. Subsequently, Martinez filed a pro se "notice of appeal" in which he challenged the court's failure to rule on his pro se motion to vacate. We consolidated the appeals and re-vested jurisdiction in the trial court for the limited purpose of ruling on the pro se motion. The court issued a ruling on December 21, 2010, denying the motion. Under Rule 31.3, Ariz. R. Crim. P., the issue is therefore moot.

Martinez both in reaching a plea agreement and in his subsequent request to withdraw from that plea. The court denied Martinez's request to vacate the plea agreement, and he filed a pro se motion for new counsel in October 2008.

¶3 At sentencing, the trial court found "the motion to obtain substitute counsel [for the Public Defender's Office] [wa]s untimely and not factually well-taken[,]" and denied the motion. Subsequently, however, the court determined the plea agreement was void and permitted Martinez to withdraw from the agreement. The court then granted the Public Defender's motion to withdraw from its representation of Martinez, and appointed the Pima County Legal Defender "as replacement counsel." Subsequently, however, the court granted the Legal Defender's request to withdraw from the case due to a "very high" case load and appointed Jack Lansdale, Jr. to represent Martinez.

¶4 Lansdale filed a motion to withdraw as counsel citing "irreconcilable differences" with Martinez. At a February 2009 hearing, the trial court initially denied Lansdale's motion to withdraw, but after learning that Martinez had "filed a complaint with the State Bar of Arizona," the court reconsidered its prior ruling and granted the motion to withdraw. The court then appointed Bradley Armstrong to represent Martinez but cautioned "if you file a Bar complaint against Mr. Armstrong, I am not going to let him withdraw. You are not going to continue from one lawyer to another."

¶5 In May 2009, Martinez filed a pro se motion requesting that the trial court order Armstrong to withdraw from the case. The court denied the motion and, following

a jury trial, Martinez was convicted on both counts of the indictment. This appeal followed.

Discussion

I. Sufficiency of the Evidence

¶6 Martinez argues his conviction for fraudulent scheme and artifice under A.R.S. § 13-2310 "was not supported by sufficient evidence" and therefore "cannot stand." In reviewing a claim of insufficient evidence, we review the evidence "'in the light most favorable to sustaining the conviction'" and resolve all reasonable inferences against the defendant. *State v. Haas*, 138 Ariz. 413, 419, 675 P.2d 673, 679 (1983), *quoting State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). We do not reweigh the evidence, but instead determine "whether there was sufficient evidence that a rational trier of fact could have found guilt beyond a reasonable doubt." *Id.*[2]

¶7 Section 13-2310(A) provides that "[a]ny person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony." Martinez asserts that "passing a bad check does not constitute making a false or

[2]Martinez admits that although he moved for a judgment of acquittal under Rule 20, Ariz. R. Crim. P., arguing "insufficient evidence . . . regarding a scheme or an artifice to defraud," he did so on different grounds than presented here. "[A]n objection on one ground does not preserve the issue on another ground." *State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 683 (App. 2008). Therefore, we review only for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). If, however, Martinez's conviction was not supported by sufficient evidence, it would constitute fundamental error. *State v. Fimbres*, 222 Ariz. 293, n.1, 213 P.3d 1020, 1024 n.1 (App. 2009).

fraudulent representation," as required by the statute, and, therefore, he could not rightfully be convicted of fraudulent scheme and artifice. The state concedes that § 13-2310 requires "more than merely issuing a check knowing that at the time . . . there were insufficient funds in the bank to pay it," *see State v. Clough*, 171 Ariz. 217, 222, 829 P.2d 1263, 1268 (App. 1992), but argues that the evidence presented below supports the verdict and shows that Martinez "did much more than just pass a bad check." We agree.

¶8 A fraudulent scheme or artifice is "some 'plan, device, or trick' to perpetrate a fraud." *Id*., *quoting Haas*, 138 Ariz. at 423, 675 P.2d at 683. In *State v. Johnson*, 179 Ariz. 375, 381, 880 P.2d 132, 138 (1994), our supreme court interpreted § 13-2310 as requiring proof "that acting pursuant to a scheme, the perpetrator obtain[ed] [a] benefit by crafting a false picture or pretense." Although fraudulent conduct is an essential element of the offense, to satisfy the statute "there need not be an actual misrepresentation or even a material omission"—there need only be "a false pretense, including a subterfuge, ruse, trick, or dissimulation upon another." *Johnson*, 179 Ariz. at 377, 880 P.2d at 134.

¶9 In addition to evidence indicating Martinez had presented checks knowing there were insufficient funds in his account, the state presented evidence from which a reasonable jury could determine he had at various times created a false pretense by his words or omissions. First, a store manager who had cashed checks for Martinez testified that when he had confronted Martinez about previous checks returned for insufficient funds, Martinez had instructed him to call an individual known as "Ernie" and had

provided an address for that person, inducing the manager to cash the check. Later, witnesses testified that "Ernie's" address was a prior address of Martinez's and that Martinez was the only signatory on the accounts from which the checks were drawn. Although Martinez is correct that the state never showed that "Ernie" was a fictitious person or that the information was false, the jury reasonably could have determined that this information was intended to mislead the manager into believing a third party was responsible for payment of the checks.

¶10 Additionally, evidence was presented that Martinez used a check from his Bank of America account, which had been overdrawn for months, to open an account at Compass Bank. Evidence also showed that Martinez had used a false social security number in opening the Compass Bank account.[3] From this evidence, the jury could reasonably infer that Martinez fraudulently opened the Compass Bank account for the purpose of furthering an ongoing scheme.

¶11 Martinez argues the state may not rely on this evidence to support its case because he "was neither indicted nor tried" on the conduct. He asserts that he "was indicted on, tried for, and convicted of . . . passing bad checks." He reasons that, because the state did not amend the indictment to include the actions it alleged constituted fraudulent pretenses, he was not charged with this conduct, and the jury did not reach its verdict based on these actions. We do not find this argument compelling. Martinez

[3]The social security number used to open the Compass Bank account was different from both the number used to open the Bank of America account and the number associated with Martinez's driver's license.

provides no authority, nor have we discovered any, requiring the specific acts constituting "false or fraudulent pretenses" to be charged in the indictment.[4]

¶12 Furthermore, the indictment did not charge Martinez with "passing bad checks"; instead it alleged that "pursuant to a scheme or artifice to defraud, [Martinez] obtained a benefit." We also note that the statute does not require the acts constituting false pretenses to be themselves criminal. *See Haas*, 138 Ariz. at 418, 675 P.2d at 678 ("scheme need not be fraudulent on its face" it must only be "reasonably calculated to deceive persons of ordinary prudence and comprehension") (internal citations omitted); *State v. Adams*, 189 Ariz. 235, 238, 941 P.2d 908, 911 (App. 1997) (that defendant was acquitted of forgery did not preclude conviction for fraudulent schemes or artifices). The bad checks were the means by which Martinez obtained a benefit and "evidence of an intent to defraud." *See Clough*, 171 Ariz. at 222, 829 P.2d at 1268 ("knowing presentation of an insufficient funds check *is the scheme or the artifice*") (emphasis original); *Fimbres*, 222 Ariz. 293, ¶ 5, 213 P.3d at 1024.

¶13 In short, the state introduced sufficient evidence from which a reasonable jury could find that Martinez had, "pursuant to a scheme or artifice to defraud, knowingly obtain[ed] a[] benefit by means of false or fraudulent pretenses, representations, promises

[4]Both cases Martinez relies on concerned instances in which the indictment was amended to pursue an action under a different statute or subsection than originally charged. *See State v. Freeney*, 223 Ariz. 110, ¶¶ 5-6, 219 P.3d 1039, 1040 (2009) (indicted on A.R.S. § 13-1204(A)(2) and state moved to amend to add charge under A.R.S. § 13-1203(A)(1)); *Fimbres*, 222 Ariz. 293, ¶ 27, 213 P.3d at 1028 (indicted on A.R.S. §13-2104(A)(2) and jury sua sponte instructed could also convict on § 13-2104(A)(1)). But here the state consistently pursued the action under § 13-2310, and Martinez was convicted under that statute.

or material omissions." § 13-2310. The evidence presented established that on multiple occasions Martinez had engaged in acts of "subterfuge, ruse, trick or dissimulation," beyond merely issuing bad checks. *See Johnson*, 179 Ariz. at 377, 880 P.2d at 134. Therefore, the jury's verdict was supported by sufficient evidence.

II. Other Acts Evidence

¶14 Martinez next argues the trial court erred in admitting evidence that on two prior occasions he had pled guilty to misdemeanor charges of "issuing . . . bad checks." Although not admissible to show "action in conformity therewith," evidence of "other crimes, wrongs, or acts" may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ariz. R. Evid. 404(b). We review the trial court's admission of other-acts evidence for an abuse of discretion. *State v. Villalobos*, 225 Ariz. 74, ¶ 18, 235 P.3d 227, 233 (2010).

¶15 Before admitting other-acts evidence under Rule 404(b), the trial court must find that the evidence is relevant and admitted for a proper purpose, and that the unfairly prejudicial effect of the evidence does not substantially outweigh its probative value. *State v. Mott*, 187 Ariz. 536, 545, 931 P.2d 1046, 1055 (1997). Before it admitted the challenged evidence, the trial court denied the state's request to introduce evidence of Martinez's nineteen previous misdemeanor convictions for issuing a bad check. The court found that although the evidence was "quite probative on a number issues,

including the intent [and] the identity of the defendant," its "probative value [was] substantially outweighed by the prejudicial effect."

¶16 After the store manager testified that Martinez had instructed him to contact an individual named "Ernie" at a Waverly Street address, the state asked the trial court to reconsider its prior decision as to the admission into evidence of two of the prior convictions for issuing a bad check, set forth in Exhibits 16 and 17. The state argued that Exhibit 16 was probative because it showed that Martinez had issued a check listing the same address he had provided to the manager as a contact for "Ernie." As to Exhibit 17, the state argued it was probative because Martinez had pled guilty to issuing a bad check from the same Bank of America account cited in several of the indicted counts, during the time frame of the indictment. The court ruled that "as [to Exhibits 16 and 17] only . . . they can properly be used under [Rule] 404 and that their probative value does outweigh the[ir] prejudicial effect . . . ."

¶17 Martinez argues the court abused its discretion because the evidence was not presented for a permissible purpose under Rule 404(b). But, the list of permissive uses provided in Rule 404(b) is "merely illustrative, not exclusive." *State v. Wood*, 180 Ariz. 53, 62, 881 P.2d 1158, 1167 (1994). Evidence that is "relevant for any purpose other than showing criminal propensities remains admissible even though it refers to a defendant's prior bad acts," as long as its probative value is not outweighed by the danger of unfair prejudice. *State v. Kiper*, 181 Ariz. 62, 65, 887 P.2d 592, 595 (App. 1994).

¶18 As discussed above, the state was required to prove that Martinez had "knowingly obtain[ed] a[] benefit by means of false or fraudulent pretenses, representations, promises or material omissions." § 13-2310. Exhibit 16 was probative and relevant as tending to establish that Martinez had engaged in "false or fraudulent pretenses, representations, promises or material omissions," because it showed that the address he had provided for "Ernie" was actually his own. § 13-2310; *see Johnson*, 179 Ariz. at 381, 880 P.2d at 138 (1994). Exhibit 17 was probative and relevant because it tended to show that Martinez was aware that he had no funds in his account, at least at one point during the time frame of the indictment, and because it countered his argument the state had failed to prove he knew his account had insufficient funds.

¶19 Rule 403, Ariz. R. Evid., requires the court to exclude relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The trial court is in the best position to balance the probative value against the risk of unfair prejudice, and is therefore "afforded wide discretion in deciding the admissibility of such evidence." *Kiper*, 181 Ariz. at 65, 887 P.2d at 595. Here, the trial court explicitly weighed the probative value of the evidence against its prejudicial effect and excluded the vast majority of other acts evidence offered by the state as unfairly prejudicial. Under the circumstances here, we cannot say the court abused its discretion in admitting the evidence relating to Martinez's two misdemeanor convictions.

III. Deprivation of Sixth Amendment Rights

¶20 Martinez next argues the trial court violated his "6th Amendment right to conflict-free counsel by denying him . . . a timely hearing on his request for change of counsel due to an irreconcilable conflict." "We review a trial court's denial of a defendant's request for substitute counsel for a clear abuse of discretion." *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 8, 154 P.3d 1046, 1050 (App. 2007). An abuse of discretion occurs only where the court "fails to inquire into the basis for the defendant's dissatisfaction with counsel or fails to conduct a hearing . . . after being presented with specific factual allegations in support of the request for new counsel." *Id.*

¶21 Martinez argues that by "ma[king] clear after appointing Mr. Armstrong that it would not tolerate or seriously entertain a motion to withdraw [or for change of counsel] . . . for the sole reason that [Martinez] had previously claimed conflicts with prior counsel," the trial court's action was equivalent to failing "to inquire as to the basis of a defendant's request for substitution" under *State v. Torres*, 208 Ariz. 340, 93 P.3d 1056 (2004).[5] He further contends that because he chose not to be present for trial because of the "irreconcilable conflict," he suffered extreme prejudice and we should not only remand for a hearing on the issue but should reverse his convictions. Because we

[5]Martinez also asserts that the trial court's statement that "if you file a Bar complaint against Mr. Armstrong, I am not going to let him withdraw[,]" "restricted [his] ability to file a bar complaint." The fact that Martinez filed a bar complaint against Armstrong belies this contention. The court merely informed Martinez that it would not continue to grant changes of counsel based on a bar complaint alone.

determine the court did not abuse its discretion in denying Martinez's motion, we disagree.

¶22 A defendant is not entitled to a hearing based on "generalized complaints" about his attorney, but rather must first "raise[] a colorable claim that he had an irreconcilable conflict with . . . counsel." *Id.* ¶¶ 8-9. "'If a defendant makes sufficiently specific, factually based allegations in support of his request for new counsel, the . . . court must conduct a hearing into his complaint.'" *Id.* ¶ 8, *quoting United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002). Here, Martinez's motion requesting that Armstrong be ordered to withdraw alleged only that "an actual irreconcilable conflict of interest exist[ed]." It contained no "specific, factually based allegations" as required for a hearing. *See Lott*, 310 F.3d at 1249.

¶23 In subsequent filings Martinez alleged that Armstrong had failed to file various motions on his behalf, had not provided him with transcripts he had requested, and had violated a previous court order by speaking to prior counsel. But these complaints do not present a colorable claim of an irreconcilable conflict with Armstrong. *See Torres*, 208 Ariz. 340, ¶¶ 8-9, 93 P.3d at 1059; *see also State v. Moody*, 192 Ariz. 505, ¶ 12, 968 P.2d 578, 580 (1998) ("disagreement over trial strategy [is] insufficient to justify new representation"). Therefore, the trial court was not required to hold a hearing on the matter. *See Torres*, 208 Ariz. 340, ¶¶ 8-9, 93 P.3d at 1059.

¶24 The court was required only "to inquire into the basis for [Martinez]'s dissatisfaction," which it did. *Paris-Sheldon*, 214 Ariz. 500, ¶ 8, 154 P.3d at 1050.

Although the court informed Martinez it would not entertain pro se motions while he was represented by counsel, it nevertheless considered Martinez's allegations concerning Armstrong during a motions hearing. The court informed Martinez there was "nothing inappropriate about the lawyers having conversations with each other as they take over the case."

¶25 In the context of discussing Martinez's choice not to attend proceedings, the trial court also "inquire[d] into the basis for [Martinez]'s dissatisfaction." *Id.* Again, Martinez contended only that he had an "irreconcilable conflict of interest" and did not provide any specific, factual allegations that could give rise to a colorable claim. *Cf. Torres*, 208 Ariz. 340, ¶ 9, 93 P.3d at 1059 (finding defendant's "specific factual allegations . . . raised a colorable claim"). To the extent Martinez is arguing the trial court's prior admonitions that it would not entertain pro se motions or allow him to change counsel for the fourth time deprived him of "the impartial, timely, pre-decision hearing to which he was entitled under *Torres*," the court abuses its discretion only when it fails to hold a hearing "*after* being presented with specific factual allegations." *Paris-Sheldon*, 214 Ariz. 500, ¶ 8, 154 P.3d at 1050 (emphasis added). Again, none of the reasons provided to the court created a colorable claim of an irreconcilable conflict. *See Torres*, 208 Ariz. 340, ¶¶ 8-9, 93 P.3d at 1059.

¶26 Although the Sixth Amendment to the United States Constitution protects the right to "competent counsel[, an indigent] defendant is not . . . entitled to counsel of choice, or to a meaningful relationship with his or her attorney." *Moody*, 192 Ariz. 505,

¶ 11, 968 P.2d at 580 (citations omitted). As the trial court informed Martinez when it allowed Lansdale to withdraw, "a good attorney isn't someone who tells a client what they want to hear. A good attorney gives the client the attorney's honest evaluation of the situation and [his] honest recommendation for how the client ought to deal with the cases." We therefore cannot say the court abused its discretion in declining to hold a *Torres* hearing or in refusing Martinez's request for substitute counsel.

IV. Restitution Order

¶27 Finally, Martinez argues the trial court improperly awarded restitution to Compass Bank, without any proof of the economic loss suffered or a showing that the bank was a victim. We review "the evidence bearing on a restitution claim in the light most favorable to sustaining the court's order." *State v. Lewis*, 222 Ariz. 321, ¶ 5, 214 P.3d 409, 412 (App. 2009). The state correctly points out that because Martinez failed to object to the restitution award below, he is limited to review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). The state also asserts that because he did not argue the error was fundamental in his opening brief, under *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008), Martinez "cannot sustain his burden in a fundamental error analysis." But, as Martinez notes, the imposition of an illegal sentence is by definition fundamental error. *State v. Zinsmeyer*, 222 Ariz. 612, ¶ 37, 218 P.3d 1069, 1082 (App. 2009) (finding improper restitution order "constitutes an illegal sentence, which is fundamental, reversible error"). Furthermore, "[a]lthough we do not search the record for fundamental error, we will not ignore it when

we find it." *State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007). We agree with Martinez that the restitution award to Compass Bank was improper and therefore constituted fundamental, prejudicial error.

¶28 Section 13-603(C), A.R.S., provides "the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court." The trial court "'may impose restitution only on charges for which a defendant has been found guilty, to which he has admitted, or for which he has agreed to pay.'" *Lewis*, 222 Ariz. 321, ¶ 7, 214 P.3d at 412, *quoting State v. Garcia*, 176 Ariz. 231, 236, 860 P.2d 498, 503 (App. 1993). And although it may impose restitution for uncharged offenses, a court may do so only if the defendant has admitted the offense or agreed to pay, unless there is evidence supporting the order. *State v. Lindsley*, 191 Ariz. 195, 197, 953 P.2d 1248, 1250 (App. 1997). The state "has the burden of proving a restitution claim by a preponderance of the evidence." *Lewis*, 222 Ariz. 321, ¶ 7, 214 P.3d at 412. Here the state argues that "evidence existed in the record to support the restitution order." We disagree and are unable to discern the basis for the order as it relates to Compass Bank. *See State v. Iniguez*, 169 Ariz. 533, 538, 821 P.2d 194, 199 (App. 1991).

¶29 Martinez argues the record fails to establish that Compass Bank was a victim in the case. Martinez is correct that the indictment did not allege that Compass Bank was a victim. But, under A.R.S. § 13-804(A) the court may order restitution "to any person who suffered an economic loss caused by the defendant's conduct," and,

therefore, the court was permitted to award restitution if Compass Bank "suffered an economic loss" as a result of Martinez's actions. *See State v. Proctor*, 196 Ariz. 557, ¶ 32, 2 P.3d 647, 655-56 (App. 1998). The record establishes Compass Bank may have suffered an economic loss, given that Martinez cashed rather than deposited one check and received cash back on others.[6]

¶30 But we are unable to discern from the record the basis for the award of $1,310 to Compass Bank. The presentence report states that "victim seven . . . noted they and/or their affiliate . . . were victims[,]" and that "[t]heir loss in this case is believed to be $1,310." Although a presentence report may contain sufficient information to justify a restitution order, *State v. Dixon*, 216 Ariz. 18, ¶ 13, 162 P.3d 657, 660-61 (App. 2007), here the report contained no explanation for the $1,310 restitution amount and is unclear whether the state or Compass Bank furnished this amount. A Compass Bank representative testified at trial that the deposits into Martinez's account totaled "1310 [dollars]," and that the account was "charged off." But this testimony does not support the contention that Compass Bank suffered an actual loss of $1,310, as the state argues. Rather, it suggests that because the account had a negative balance, it had to be "charged off" in order to close it.

¶31 The restitution to which a victim is entitled is a question of fact for the trial court, and we will not speculate as to whether Compass Bank suffered a loss or about the amount of that loss. *See Iniguez*, 169 Ariz. at 538, 821 P.2d at 199. Because we "cannot

[6]The amount taken in cash seems to be $450, not $1,310.

determine the basis of the restitution order from the record," we must vacate the portion of the sentence related to restitution to Compass Bank and "remand to the trial court to reconsider the propriety of the restitution order and to specify the basis for its determination." *Id.*

Disposition

¶32 We vacate the trial court's order requiring Martinez to pay restitution to Compass Bank but otherwise affirm his convictions and all other aspects of his sentences.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge